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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/869,106      | 10/09/2001  | Isabelle Poquet      | 045636-5048         | 1150             |

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EXAMINER

GRASER, JENNIFER E

ART UNIT PAPER NUMBER

1645

DATE MAILED: 03/21/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/869,106

Applicant(s)  
Poquet et al.

Examiner  
Jennifer Graser

Art Unit  
1645



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-22 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 11-22 are subject to restriction and/or election requirement

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 11-16, drawn to a method of producing a protein of interest by culturing a gram positive bacterial strain which does not express a functional HtrA protease.

Group II, claim(s) 17 and 18, drawn to a Gram positive bacterial strain which is not a *Lactobacillus helveticus* strain having a *gusA* reporter gene into the HtrA protease gene and which has a genome that is less than 3.2 Mb in size.

Group III, claim(s) 19 drawn to a method of producing a fermented product.

Group IV, claim(s) 20, drawn to a method of producing a dietetic food.

Group V, claim(s) 21 and 22, drawn to a method of producing a medicinal product.

2. The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical feature of Group I is a method of producing a specific protein through the use of a gram positive bacterial strain. The special technical feature of Group II is a

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Gram positive bacterial strain which is not a *Lactobacillus helveticus* strain having a *gusA* repressor gene into the *HrtA* protease gene and which has a genome that is less than 3.2 Mb in size. The special technical features of Groups I and II lack the same or corresponding special technical feature because the bacterium used in Group I may be a *Lactobacillus helveticus* strain having a *gusA* repressor gene into the *HrtA* protease gene. The strain used in the method of Group I does not have to be the particular strain recited in Group II. Groups III, IV and V are methods for making different products which use different reagents to produce the products, i.e., only Group III requires a fermentation substrate. Additionally, the substrates used to produce a dietetic food may not be the same as those used to produce a medicinal product. The method of Group I is different from these 3 Groups as its objective is to produce a protein of interest. Accordingly, Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical features.

3. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1645 Fax number is (703) 308-4242 which is able to receive transmissions 24 hours/day, 7 days/week.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Graser whose telephone number is (703) 308-1742. The examiner can normally be reached on Monday-Friday from 7:00 AM-4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*J. Graser* 3/20/03  
JENNIFER E. GRASER  
PRIMARY EXAMINER